

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----	X	
In re:	:	Chapter 13
	:	
STELLA LEE TERRANOVA and	:	Case No: 18-70004-ast
ROBERT A. TERRANOVA,	:	
	:	
Debtors.	X	
-----	:	Adversary Proceeding
GUSTAVIA HOME, LLC,	:	
	:	Case No: 18-08054-ast
Plaintiff,	:	
	:	
-against-	:	
	:	
FEDERAL NATIONAL MORTGAGE	:	
ASSOCIATION ("Fannie Mae") and SETERUS,	:	
INC.,	:	
	:	
Defendants.	:	
	:	
-----	X	

**JOINT STATEMENT OF MATERIAL FACTS PURSUANT
TO LOCAL BANKRUPTCY RULE 7056-1**

IT IS HEREBY agreed and stipulated by and between the undersigned counsel for Federal National Mortgage Association ("Fannie Mae") and Seterus, Inc. ("Seterus") (together, "Defendants") and counsel for plaintiff, Gustavia Home, LLC ("Plaintiff" or "Gustavia") that no dispute exists as to the following material facts relevant to Defendants' motion to dismiss [ECF Doc. 8] which was converted to a motion for summary judgment on Plaintiff's adversary complaint filed on April 9, 2018 [ECF Doc. 1] by order dated December 12, 2018 [ECF Doc. 15]:

1. On March 22, 2006, Robert Terranova obtained a loan in the original principal amount of \$356,000.00 from The New York Mortgage Company, LLC (the "Loan") [ECF Doc. 8-3].

2. The Loan was memorialized in a promissory note (the “Note”) dated March 22, 2006 , signed by Robert Terranova [ECF Doc. 8-3].

3. Contemporaneously with the Note, Robert Terranova and Stella Terranova (the “Terranovas” or the “Debtors”) as husband and wife, executed a mortgage in the original principal amount of \$356,000.00 on March 22, 2006 (the “Mortgage”) secured by the property located at 3 South Street, Selden, New York 11784 (the “Property”) [ECF Doc. 8-3].

4. The Terranovas do not dispute executing the Note or Mortgage.

5. The Mortgage was recorded in the Suffolk County Clerk’s office on May 15, 2006 in Liber M00021298, Page 958 in first lien position.

6. The Mortgage was assigned to Fannie Mae as evidenced by an “Assignment of Mortgage” dated April 11, 2013 (the “Assignment”) and recorded in the Suffolk County Clerk’s office on June 10, 2013 in Liber M00022340, Page 552. [ECF Doc. 8-3].

7. On June 28, 2007, the Terranovas obtained a second loan in the original principal amount of \$50,000.00 from GMAC Mortgage, LLC (the “Second Loan”). [ECF Doc. 8-7].

8. The Second Loan was memorialized in a promissory note (the “Second Note”) dated June 28, 2007, signed by the Terranovas. [ECF Doc. 8-7].

9. Contemporaneously with the Second Note, the Terranovas executed a second mortgage in the original principal amount of \$50,000.00 on June 28, 2007 (the “Second Mortgage”), secured by the Property. [ECF Doc. 8-7].

10. The Second Mortgage was recorded in the Suffolk County Clerk’s office on August 15, 2007 in Liber M00021584, Page 235 in second lien position.

11. The Second Mortgage was assigned from GMAC Mortgage LLC to Ocwen Loan Servicing, LLC by assignment dated December 18, 2013. [ECF Doc. 8-7].

12. The Second Mortgage was further assigned from Ocwen Loan Servicing, LLC to Bucks Financial, LLC by assignment dated December 18, 2013. [ECF Doc. 8-7].

13. The Second Mortgage was further assigned to Plaintiff from Bucks Financial, LLC pursuant to an "Assignment of Mortgage" dated October 9, 2015 and recorded in the Suffolk County Clerk's office on December 31, 2015 at Liber M00022664, Page 328. [ECF Doc. 8-7].

14. An action to foreclose on the Property was commenced by Fannie Mae on March 3, 2015, in the Supreme Court, State of New York, County of Suffolk, under Index No. 602088/2015 (the "Fannie Mae Foreclosure Action") due to the Terranovas' default in payment on the Mortgage Loan. [ECF Doc. 8-4].

15. The Terranovas executed a loan modification agreement dated July 21, 2016 with Seterus, as servicer for Fannie Mae (the "Loan Modification"). [ECF Doc. 8-5].

16. The Loan Modification modified the Note and Mortgage effective September 1, 2016, with (1) a new principal balance of \$425,182.64; (2) deferred \$92,100 of the new principal balance; (3) reduced the interest rate to 3.750 %; (4) reduced the monthly principal and interest payments to \$1,340.74; and (5) extended the maturity date of the Loan. (Loan Modification, ¶¶ 1-2.)

17. Because the Terranovas' default was cured through the Loan Modification, the Fannie Mae Foreclosure Action was discontinued pursuant to an order filed October 6, 2016. [ECF Doc. 8-6].

18. An action to foreclose on the Property was commenced by Gustavia Home on April 14, 2017, in Eastern District of New York, bearing Case No. 2:17-cv-02252 ("Gustavia Foreclosure Action") due to the Terranovas' default in payment on the Second Mortgage Loan.

[ECF Doc. 8-7].

19. The Gustavia Complaint indicates that only parties “whose interest or lien, if any, has accrued subsequent to, and is subject and subordinate to, the lien of said Mortgage.” were named as Defendants. *See* ¶ 8 of ECF Doc. 8-7].

20. A judgment of foreclosure and sale was entered on November 15, 2017 (the “Gustavia Judgment”) in the Gustavia Foreclosure Action. [ECF Doc. 8-8].

21. The Gustavia Judgment states that the “premises is to be sold in on parcel in ‘as is’ physical order and condition, subject to ... prior liens of record, if any.”

22. Fannie Mae was not named as a party in the Gustavia Foreclosure Action. *See* ECF Doc. 8-7, generally.

23. The Debtors filed a Chapter 13 Bankruptcy Petition on January 2, 2018 (the “Bankruptcy Case”).

24. SN Servicing Corporation filed a proof of claim on behalf of Gustavia in the Bankruptcy Case on March 8, 2018 in the amount of \$78,203.53 [Bankruptcy Case, Claim No. 6].

25. Seterus filed a proof of claim on behalf of Fannie Mae in the Bankruptcy Case on March 13, 2018 in the amount of \$454,286.50 [Bankruptcy Case, Claim No. 7].

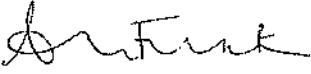
26. Debtors filed a “Motion to Strip a Second Mortgage Lien” in the Bankruptcy Case on March 13, 2018 seeking to reclassify the full amount of the Second Mortgage as fully unsecured. [Bankruptcy Case, ECF Doc. 21]. Debtors attached exhibits to the “Motion to Strip a Second Mortgage Lien”, including an appraisal of the Property dated February 3, 2018 (the “Appraisal”).

27. The Appraisal filed by Debtors indicates that as of February 3, 2018, the Property

was appraised at \$350,000.00.

Dated: January 3, 2019

HOGAN LOVELLS US LLP

By: 
Allison M. Funk, Esq.
875 Third Avenue
New York, New York 10022
Telephone: (212) 918-3000
e-mail: allison.funk@hoganlovells.com

*Attorneys for Defendants Federal National
Mortgage Association and Seterus, Inc.*

HASBANI & LIGHT, P.C.

By: 
Rafi Hasbani, Esq.
450 Seventh Avenue, Suite 408
New York, New York 10123
Telephone: (646) 490-6677
e-mail: rhasbani@hasbanilight.com

Attorneys for Plaintiff Gustavia Home, LLC